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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

15 In re: ) Case No. 21-51255-MEH  
16 ) Chapter 11  
17 DUTCHINTS DEVELOPMENT LLC, ) Date: February 10, 2022  
18 ) Time: 10:00 a.m.  
19 Debtor. ) Place: Hearing to be conducted by  
20 ) Tele/Videoconference  
21 ) Judge: Hon. M. Elaine Hammond  
22 )  
23 )

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**STATEMENT IN FURTHER SUPPORT OF THE UNITED STATES TRUSTEE'S  
MOTION TO APPOINT CHAPTER 11 TRUSTEE UNDER 11 U.S.C. § 1104(a) OR, IN  
THE ALTERNATIVE, TO CONVERT CASE TO CHAPTER 7 PURSUANT TO 11  
U.S.C. § 1112(b), AND RESPONSE TO DEBTOR'S NOTICE OF INTENT (ECF NO. 115)**

25 Tracy Hope Davis, the United States Trustee for Region 17 (the "United States Trustee"),  
26 by and through her undersigned counsel, hereby files this statement in further support of the United  
27 States Trustee's motion to appoint a chapter 11 trustee under 11 U.S.C. § 1104(a) or, in the  
28 alternative, to convert this case to chapter 7 pursuant to 11 U.S.C. § 1112(b), and in response to  
the Debtor's document entitled "notice of intent" (the "Notice of Intent"). ECF No. 115.

29

**INTRODUCTION**

30 The Court should grant the United States Trustee's Motion because the United States  
31 Trustee has established cause for the relief requested and no timely opposition to the Motion has  
32 been filed. *See Docket.* The Court should reject the Debtor's Notice of Intent for three reasons: (i)  
33 the Notice of Intent is procedurally defective and the Debtor provides no legal support for

1 unilaterally extending deadlines to file pleadings without Court approval; (ii) the deadline for the  
2 Debtor to oppose the United States Trustee’s Motion expired on January 27, 2022; and (iii) the  
3 Debtor cannot unilaterally extend the deadline to file a response where the Bankruptcy Local Rule  
4 expressly requires Court approval.

5 **STATEMENT IN FURTHER SUPPORT OF THE MOTION**

6 **I. The United States Trustee’s Motion Should be Granted.**

7 By her motion, the United States Trustee seeks a Court order directing the appointment of  
8 a chapter 11 trustee for debtor Dutchints Development, LLC (the “Debtor”) or, in the alternative,  
9 to convert the case to chapter 7 (the “Motion”), because the Debtor’s ongoing efforts to further its  
10 own interest at the expense of creditors jeopardizes any realistic prospects of successfully  
11 reorganizing.<sup>1</sup> ECF No. 95. Oppositions to the Motion were due on January 27, 2022, pursuant to  
12 Bankruptcy Local Rule 9014-1(c)(1) (the “Opposition Deadline”), and any reply is due February  
13 3, 2022. *Id.*

14 As set forth in the United States Trustee’s Motion and Bankruptcy Local Rule 9014-  
15 1(c)(1), the deadline to file any opposition is fourteen (14) days before the scheduled hearing, or,  
16 in this case, January 27, 2022. ECF Nos. 95 and 96. Furthermore, the notice of hearing for the  
17 United States Trustee’s Motion (the “Notice of Hearing”) states that if “there is not a timely  
18 opposition to the motion, the court may enter an order granting the requested relief by default.” *Id.*

19 As of this filing, no opposition has been filed to the United States Trustee’s Motion. *See*  
20 Docket. Instead, after the expiration of the Opposition Deadline, the Debtor filed the Notice of  
21 Intent, informing the Court and the parties that it intends to file an opposition seven (7) days before  
22 the scheduled hearing (or February 3, 2022), the same day the United States Trustee’s reply is due.  
23 ECF No 115.

24 Because the United States Trustee has established “cause” for an order directing the  
25 appointment of a chapter 11 trustee or, in the alternative, to convert the case to chapter 7 pursuant,  
26 and because no opposition has been timely filed, the United States Trustee’s Motion should be  
27 granted.

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28 <sup>1</sup> The Motion is joined by (1) creditors Paul Harms, Johanna Fogl, Catherine Hung, and Tom Pare (ECF No. 103);  
(2) the Committee (ECF No. 105); and (3) interested party 5150 ECR Los Altos, LLC (ECF No. 114).

1           **II. The Debtor's Notice of Intent Should be Rejected.**

2           **a. The Debtor's Notice of Intent is Procedurally Improper and Fails to Make a Single**  
3           **Request for the Court to Consider.**

4           The Debtor failed to file a motion for an extension of time to object to the United States  
5           Trustee's Motion; rather, the Debtor filed a Notice of Intent to Object *after* the Opposition  
6           Deadline. ECF No. 115. This is not elevating form over substance. Simply put, the Debtor's Notice  
7           of Intent is procedurally defective because it does not include a single request for the Court to  
8           consider and act on. *See Head Start Family Educ. Program, Inc. v. Coop. Educ. Serv. Agency 11*,

9           46 F.3d 629, 635 (7th Cir. 1995) (The "court has no duty to research and construct legal arguments  
10          available to a party" with respect to "arguments . . . raised in a short conclusory paragraph which  
11          contains no substantive argument, legal citations, or references to the record."). Because the Debtor  
12          has not presented a procedurally proper motion and fails to make a single request for the Court to  
13          consider, the Court should reject the Notice of Intent and find that the Debtor's time to respond to  
14          the United States Trustee's Motion has expired.

15           **b. The Debtor's Notice of Intent Fails to Provide Arguments or any Legal Authority**  
16           **for the Assertion that the Opposition Deadline is Seven Days Before the Scheduled**  
17           **Hearing and Misinterprets Bankruptcy Local Rule 9014-1(c).**

18           The Debtor failed to comply with the terms of the Notice of Hearing on the United States  
19           Trustee's Motion requiring parties to file any oppositions by January 27, 2022, pursuant to  
20          Bankruptcy Local Rule 9014-1(c)(1), and any reply papers by February 3, 2022. *Id.*

21           The Debtor's delayed Notice of Intent is improper and fails to provide any grounds or legal  
22           authority for its statement regarding the appropriate scheduling deadlines in a motion to convert  
23          or appoint a trustee. *See In re Mason*, 386 B.R. 715 (Bankr. N.D. Ill 2008) ("[p]erfunctory and  
24          undeveloped arguments and arguments that are unsupported by pertinent authority are waived.").  
25           The Debtor incorrectly interprets Bankruptcy Local Rule 9014-1(c) because the United States  
26           Trustee's Motion seeks relief in the form of the appointment of a chapter 11 trustee or conversion  
27          of this bankruptcy case against the Debtor – an identified, named entity – and the Debtor provides  
28          no argument to counter this fact. *See* ECF Nos. 95 and 115.

29           On January 28, 2022, one day after their opposition was due, the Debtor filed a document  
30          entitled "Notice of Intent," informing the Court and the parties that it intends to file an opposition

1 to the United States Trustee's Motion seven days before the scheduled hearing pursuant to  
2 Bankruptcy Local Rule 9014-1(c)(2). *Id.* The Debtor's Notice of Intent is based only on a short  
3 statement that the Debtor intends to oppose the United States Trustee's Motion seven days before  
4 the scheduled hearing because, according to the Debtor:

5 A motion to convert or appoint a trustee is to seek relief generally, and not  
6 against an identified, named entity and thereby opposition to the requested relief  
shall be filed and served on the initiating party no less than seven days before  
the actual scheduled hearing date.

7 Because the Debtor provides no legal authority to support deviation from Bankruptcy Local  
8 Rule 9014-1(c), the Court should reject the Debtor's argument.

9

10 **c. Through the Debtor's Notice of Intent, the Debtor Seeks to Unilaterally Extend the  
Deadlines Set forth In the Motion In Contravention of the Bankruptcy Local Rules  
and Without Court Approval.**

11 The Debtor's Notice of Intent does not request Court authority file an opposition seven  
12 days before the hearing date. *See* ECF No. 115. It is not an opposition to the United States Trustee's  
13 Motion. On its face, the Debtor's pleading states the Debtor intends to oppose the United States  
14 Trustee's Motion. The Court should not condone the Debtor's blatant disregard of the Notice and  
15 Hearing requirements set forth in the Bankruptcy Local Rules. *Id.*

16 Specifically, Bankruptcy Local Rule 9006-1(a) provides, in relevant part:

17 [A]pproval of the Court is required to enlarge or to shorten time to perform any act  
18 or to file any paper pursuant to the Federal Rules of Civil Procedure, the Bankruptcy  
19 Rules, or these Bankruptcy Local Rules.

20 In this case, the Debtor has not sought Court approval to enlarge the time to file an  
21 opposition to the United States Trustee's Motion. Consequently, the Notice of Intent should be  
22 rejected.

1                   **CONCLUSION**

2                   Based upon the foregoing, the United States Trustee request that this Court enter an order  
3 (1) granting the Motion; (2) rejecting the Debtor's Notice of Intent; and (3) for such other and  
4 further relief as is just and appropriate. The United States Trustee reserves the right to formally  
5 respond to any opposition filed.

6                   Dated: February 2, 2022

7                   TRACY HOPE DAVIS  
8                   UNITED STATES TRUSTEE

9                   By:/s/ Elvina Rofael

10                  Elvina Rofael  
11                  Trial Attorney